



ASHFORD
BOROUGH COUNCIL

Regional Infrastructure Fund (RIF) Topic Paper

of the Local Planning Authority in respect of:

Land at Chilmington Green, Ashford Road, Great Chart, Ashford, Kent

Appeals by:

Hodson Developments (Ashford) Limited; Chilmington Green Developments Limited;
Hodson Developments (CG ONE) Limited; Hodson Developments (CG TWO)
Limited; and Hodson Developments (CG THREE) Limited.

Against the failure to determine applications to modify or discharge obligations contained in the S.106 agreement dated 27 February 2017 attached to planning permission ref: 12/00400/AS (as amended by a Supplement Agreement dated 29 March 2019 and a deed of variation dated 13 July 2022).

Appeal References: APP/W2275/Q/23/3333923 & APP/E2205/Q/23/3334094

Ashford Borough Council References: AP-90718 & AP-90647

Contents	Page
1.0 Introduction	2
2.0 Relevant Planning Policy & Guidance	4
3.0 Appraisal of the Proposed Modifications	4
4.0 Conclusion	6

1.0 Introduction

- 1.1 This Topic Paper is submitted on behalf of the Local Planning Authority - Ashford Borough Council ("the Council") and concerns the modifications proposed to Schedule 22 of the Chilmington Green S.106 Agreement ("the Agreement") which requires financial payments towards the Regional Infrastructure Fund (the "RIF").
- 1.2 Schedule 22 secures the payment of a total of £5,622,589 to the Council in four instalments of £1,405,647 at 3999; 4599; 5199 and 5599 dwelling occupations (refer: - Schedule 22, paragraphs 1 & 2). The monies received are to be used to fund "*infrastructure and road improvement works at the Drovers Roundabout and junction 9 of the M20 and the Eureka Skyway footbridge (including the repayment of forward funding in respect of the said improvement works)*" (refer: - Schedule 22, paragraph 3). To date, the trigger for the Chilmington Green development (The "Development") to make the first payment (3999 occupations) has not been reached.
- 1.3 On the western side of Ashford, the capacity of both the M20 motorway junction 9 and the nearby Drovers roundabout was inadequate to cater for all planned growth. Therefore, highway improvement schemes to upgrade both junctions were required and designed to alleviate these two constraints. The provision of the Eureka Skyway Bridge, although slightly off-line, was an integral part of the scheme to provide greater capacity for road traffic at junction 9, by providing an alternative route for pedestrian and cycle traffic to cross the motorway between the Eureka Leisure Park to the north and the Warren Retail Park to the south, both with wider onward connections – hence the specific mention of that Bridge as part of the J9 improvement scheme. The improvement works commenced in June 2010 and were completed in summer 2011.
- 1.4 The cost of these improvements was forward funded by government funds from the then Regional Infrastructure Fund, which are the subject of funding agreements (CD10/6 - CD10/9) entered into in May 2010 between the Council, Kent County Council and SEEDA, now succeeded by Homes England (formally known as the Homes and Communities Agency). These agreements required the forward funding to be refunded through developer contributions collected as relevant schemes come forward. Without this forward funding, the highway improvements would not have been delivered, and this would be a severe constraint on the Development. The Council is required to use reasonable endeavours to maximise contributions from development to repay the forward funding, and to pass monies received to Homes England accordingly. The contribution secured in the Agreement is a proportionate share to reimburse this forward-funding. The total amount of forward funding is £15.1 million.

- 1.5 The Supplementary Transport Assessment (the “STA”) Vectos, May 2014, submitted by the appellant in support of the Chilmington Green planning application acknowledges that a payment towards the RIF fund is required (CD10/10, paragraph 7.67, page 46 & executive summary paragraph 23, page 5). The STA executive summary (CD10/10, paragraph 24, page 5) states that *“these contributions will ensure that the wider implications of traffic associated with the proposed development are addressed”*.
- 1.6 Contributions towards the RIF repayments have been and are being sought from relevant developments, including Chilmington Green, however, to date, the Council has not yet secured sufficient monies to fully reimburse the forward funding.
- 1.7 The total financial contribution secured from the Development of £5,622,589 was calculated based on the number of new PM Peak trips from the Development that would pass through the Drovers roundabout or J9 respectively. The respective contributions were calculated as follows: - Drovers Roundabout – £2,635,250 / J9 & Bridge – £2,987,399, although very slightly less than the total of these sums was secured due to an error¹.
- 1.8 The methodology for calculating the contributions, and the first contributions secured, were set out in the Council’s “RIF Repayment Contributions for Developments’ document dated April 2014 (CD10/19). An Update Note dated October 2024 (CD10/20) provides details of the further contributions secured from developments between April 2014 and the opening of the Possingham Farm Appeal Inquiry in October 2024, which includes the contribution secured from Chilmington Green. Since publication of the October 2024 Update Note, a further contribution of £534,918.75 has been secured via the s.106 agreement accompanying the outline planning permission granted on appeal by the Planning Inspectorate in November 2024 for the Possingham Farm development. A further updated Table 2 dated January 2025 (CD10/21) shows that total contributions of £11,728,104.75 have been secured to date, including the payments secured from Chilmington Green. Therefore, a shortfall of £3,371,895.25 still exists to be met by other developments coming forward in the future.

¹ The calculations for Chilmington Green’s RIF contributions were provided to Ashford Borough Council in an email from Mr. Ian Dix, Director, Vectos on 26/6/14. Mr. Dix’s email contained a mathematical error which was overlooked at the time; as a result, the “Total Contributions” secured in the S.106 dated 27/2/17 are £5,622,589 (i.e. £60 too little).

2.0 Relevant Planning Policy & Guidance

- 2.1 Chilmington Green AAP Policy CG11 Highways and Access – requires the Development to contribute towards the repayment of the forward funding arrangements that delivered the improvements to the A28 Drivers roundabout and M20 Junction 9 (CD3/1/1, page 79).
- 2.2 Local Plan Policy SP1 Strategic Objectives – seeks to ensure development is supported by the necessary social, community, physical and e-technology infrastructure, facilities and services (CD3/1/3, page 6).
- 2.3 Local Plan Policy TRA1 Strategic Transport Schemes – identifies the need for the implementation of strategic highway schemes that remove the serious impediment to growth. The reasoned justification for policy TRA1 (paragraphs 8.18 and 8.19) refers to the A28 Drivers Roundabout and M20 Junction 9 (CD4/1, pages 251 & 253). The statutory background to the specific approach which the Local Plan had to take to these projects is explained in more detail in the Council’s “RIF Repayment Contributions for Developments” Update Note dated October 2024 (CD10/20).
- 2.4 Local Plan Policy COM1 Meeting the Community’s Needs – identifies the requirement for infrastructure and facilities to meet the need generated by new development (CD4/1, page 303).
- 2.5 Local Plan Policy IMP1 Infrastructure Provision – seeks the delivery of infrastructure to support new development (CD4/1, page 312).
- 2.6 Paragraph 115(d) of the NPPF 2024 states that applications for development should ensure that *“any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree through a vision-led approach”*.

3.0 Appraisal of the Proposed Modifications

- 3.1 The appellant seeks to discharge the RIF payments in their entirety for *“reasons of viability and deliverability”*. The appellant states that *“such is the level of cost of this obligation that the burden of payment is undermining the viability and in turn the deliverability of the Development. In these circumstances these payment obligations cannot sensibly be regarded as serving any useful purpose and ought to be discharged”* (CD2/14, request No. 99).
- 3.2 For the reasons set out in the Council’s legal submissions, it is not accepted that viability is relevant to the tests which need to be applied when considering

the appeals, the Council's 'Viability' Proof of Evidence will, however, present the Council's case in respect of the substantive viability issues; therefore, this Topic Paper does not respond to this point.

- 3.3 The appellant makes just one point on the actual obligation and the need for it, namely a suggestion that payments made in association with other planning permissions for development that would increase traffic at the Drovers roundabout or M20 Junction 9 may mean that the level of funding secured in the Agreement is no longer needed. Specific reference is made to the Court Lodge development (CD2/13, paragraphs 10.88 - 10.89 & 10.97).
- 3.4 Paragraph 1.8 above, provides details of the funding secured to date and the shortfall that remains to be met by future developments. The planning application for the Court Lodge development, referred to by the appellant, has not yet been determined and therefore whether contributions would be necessary from that development has not yet been established. However, irrespective of whether contributions are secured from Court Lodge or not, there would remain a requirement for Chilmington Green to pay its proportionate share towards the financial cost of undertaking the highway works.
- 3.5 In their appeal against the Council's decision to refuse planning permission for the Possingham Farm development, the appellant did not dispute the requirement for the RIF contribution to mitigate the impacts of that development, albeit they did dispute the amount to be paid. In his decision (CD7/1, paragraph 136) the Inspector identified that there was "*no dispute about the principle of the Regional Infrastructure Funding (RIF) contribution*" and the payment required by the Council has been secured as part of that decision.
- 3.6 Deleting the requirement for Chilmington Green to contribute towards the RIF would mean that the Development would not contribute towards the cost of a significant highway improvement scheme that, if not implemented, would have meant that the Development could not have been brought forward due to significant constraints on the highway network. Discharging the obligation would mean that the shortfall in monies secured to repay the forward funding would increase very significantly (by £5,622,589.00), more than doubling the current total shortfall to a sum of £8,994,484.25.
- 3.7 The "RIF Repayment Contributions for Developments" Update Note dated October 2024 (CD10/20) explains that the existence of the obligations in Schedule 22 of the Agreement, while the "pooling restriction" in Reg. 123 of the CIL Regulations was in force (until September 2019), meant that securing contributions towards RIF repayment from two much smaller developments that were granted planning permission during that period was prevented by law.

This increases the relative importance of now retaining the obligations in Schedule 22.

- 3.8 It has been recognised in caselaw that securing repayment of public money, expended by way of forward-funding necessary highway infrastructure, is a useful purpose which can justify a planning obligation being retained for many years after the works have been carried out (refer to R. (on the application of Mansfield District Council) v. [*Secretary of State for Housing, Communities and Local Government*](#) [2018] EWHC 1794, Administrative Court).

4.0 Conclusion

- 4.1 The Agreement currently secures a financial contribution of £5,622,589.00 to contribute towards the repayment of forward funding provided to fund infrastructure and road improvement works at the Drivers Roundabout and junction 9 of the M20 and the Eureka Skyway footbridge.
- 4.2 This obligation continues to serve a useful purpose because the infrastructure and road improvement works undertaken mitigate the highway impact of the Development. This impact was mitigated through the early delivery of highway improvements that were forward funded and undertaken at public expense in 2010/2011 to unlock development, including the development at Chilmington Green.
- 4.3 The modifications proposed to the Agreement would not serve that purpose equally well because the highway impacts of the Development identified when outline planning permission was granted remain and consequently this obligation helps, proportionately, to repay the public money which has been expended.